United Nations CERD/C/LUX/CO/14-17

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Concluding observations* on the combined fourteenth to seventeenth periodic reports of Luxembourg

1. The Committee considered the combined fourteenth to seventeenth periodic reports of Luxembourg (CERD/C/LUX/14-17), at its 2281st and 2282nd meetings (CERD/C/SR.2281 and 2282), held on 13 and 14 February 2014. At its 2291st and 2292nd meetings (CERD/C/SR.2291 and 2292), held on 20 and 21 February 2014, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission, in a single document, of the State party's fourteenth to seventeenth periodic reports drafted in conformity with the treaty-specific reporting guidelines. However, it regrets the late submission of the reports and encourages the State party to meet the deadlines for submission of its future reports.

3. The Committee is pleased with the frank and constructive dialogue it held with the delegation of the State party. The Committee takes note with satisfaction of the oral statement and detailed replies given by the delegation during the consideration of the report.

B. Positive aspects

4. The Committee notes with interest the legislative, institutional, administrative and political measures taken by the State party since its last periodic report, which should contribute to combating racial discrimination, particularly:

(a) The adoption of the Act of 23 October 2008 on Luxembourg nationality, which makes it possible to retain one's nationality of origin when acquiring Luxembourg nationality and allows the acquisition of Luxembourg nationality for children born in the Grand Duchy to foreign parents, one of whom was also born in Luxembourg, as well as the recovery of Luxembourg nationality for those who have lost it by residing outside the national territory;

* Adopted by the Committee at its eighty-fourth session (3–21 February 2014).

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(b) The adoption of the Act of 16 December 2008 concerning the reception and integration of foreigners in the Grand Duchy of Luxembourg, which provided for the establishment of the Luxembourg Reception and Integration Agency;

(c) The adoption of the Act of 21 November 2008 which provided for the establishment of the National Advisory Commission on Human Rights in the Grand Duchy of Luxembourg;

(d) The adoption of the Act of 28 November 2006 on equal treatment, which provided for the establishment of the Centre for Equal Treatment;

(e) The criminalization of Holocaust denial under article 457-3 of the Criminal Code;

(f) The adoption of the national multi-year plan of action to achieve integration and combat discrimination, 2010–2014;

(g) The establishment of the welcome and integration contract, which is designed to facilitate the integration of foreigners and can reduce the period of residence required as a condition for acquiring Luxembourg nationality;

(h) The establishment of BEE SECURE Stopline, a programme combating Internet racism.

5. The Committee also notes with interest that, since it last considered a periodic report from the State party, Luxembourg has ratified the following international instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 May 2010);

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2 September 2011);

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (26 September 2011);

(d) Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights; 21 March 2006).

C. Concerns and recommendations

Ethnic composition of the population

6. The Committee takes note of the fact that, for philosophical and historical reasons, the State party does not collect ethnic data on populations who live on its territory. Notwithstanding, the Committee notes with concern the absence of any information in the State party's report on the socioeconomic indicators of different population groups who live on its territory, disaggregated by nationality and ethnic origin (art. 1).

In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1) and taking into account its general recommendation No. 24 (1999) concerning article 1 of the Convention, the Committee recommends that the State party collect and publish comprehensive, reliable and up-to-date statistical data on socioeconomic indicators, disaggregated by nationality and ethnic origin, including on immigrants and refugees, drawn from national surveys or censuses that are based on self-identification, to allow the Committee to better assess how the rights enshrined in the Convention are exercised in Luxembourg.

The Committee also recommends that the State party put in place instruments for collecting such data and provide information on its progress in that regard in its next report.

Definition of racial discrimination

7. The Committee is concerned that the definition of racial discrimination contained in article 1, paragraph 1, of the Act of 28 November 2006 on equal treatment does not include the criteria of national origin, colour or descent, and therefore is not quite consistent with article 1 of the Convention (arts. 1 and 2).

The Committee recommends that the State party revise article 1, paragraph 1, of the Act of 28 November 2006 to bring its legislation fully into line with the Convention.

Direct application of the Convention by national courts

8. The Committee notes that the State party's legislation provides for the primacy of international treaties over national law. However, the Committee regrets that the State party has not provided any information on cases in which the Convention has been directly applied by its courts (art. 2).

The Committee recommends that the State party continue its efforts to raise awareness among judges, magistrates and lawyers of the provisions of the Convention to ensure that they are invoked and applied directly by the courts of the State party.

Institutional mechanisms

9. The Committee regrets that the new National Council for Foreigners has not renewed the mandate of the special standing commission to combat racial discrimination and has replaced it with a commission on integration and equal opportunities, which is likely to reduce the scope of racial discrimination as an issue within the work of the National Council (art. 2).

The Committee encourages the State party to consider reallocating the powers of the former special standing commission on racial discrimination so as to maintain the scope of the issue of racial discrimination.

10. The Committee is concerned that the Luxembourg Reception and Integration Agency does not have the necessary resources, particularly human resources, to carry out its mandate, which may prevent it from working effectively in the event of large flows of migrants (art. 2).

The Committee recommends that the State party undertake a review of the functioning and needs of the Luxembourg Reception and Integration Agency and provide it with sufficient human resources to fulfil its mandate effectively.

Aggravating circumstance for racially motivated crimes

11. The Committee notes the information provided by the State party to the effect that Luxembourg criminal law does not consider motive as an aggravating circumstance in a crime. For this reason, the Committee is concerned by the fact that "racial motives for a crime are not considered to be an aggravating circumstance" (CERD/C/LUX/14-17, para. 42) (art. 4).

The Committee reiterates its recommendation to the State party that it should introduce into its criminal legislation an aggravating circumstance for racially motivated crimes.

Compliance with article 4 of the Convention

12. The Committee notes the explanations given by the State party's delegation on the legislative provisions making it possible to ban a priori any organizations that incite racial discrimination and, following a court decision, to impose penalties on them up to and including dissolution if they undermine public order. It also notes that the Criminal Code provides for the punishment of legal persons, including organizations that incite racial discrimination. The Committee regrets, however, that the State party has not introduced into its legislation provisions specifically banning and declaring illegal any organization that incites racial discrimination (art. 4).

Recalling its general recommendation No. 15 (1993), which states that all the provisions of article 4 of the Convention are of a mandatory and preventive nature, and taking into consideration its general recommendation No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party ensure that all elements of article 4 of the Convention are incorporated into its legislation. In that connection, the Committee requests the State party to provide information regarding the current judicial procedure for banning and dissolving organizations that incite racial hatred.

Asylum seekers

13. The Committee is concerned that asylum seekers have to wait for nine months after submitting a request before they are granted access to the labour market (art. 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party reduce the period of nine months so as to facilitate more rapid access for asylum seekers to the labour market.

Discrimination in respect of employment

14. While noting the information provided by the State party's delegation, the Committee is concerned by the difficulties encountered with regard to labour market access by persons of foreign origin, mainly from countries outside the European Union, and particularly women (art. 5).

In the light of its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party take all necessary measures to facilitate access to the labour market for persons of foreign, non-European Union origin, particularly women. The Committee also recommends that the State party periodically evaluate the measures introduced to this end, in order to adjust or improve them. Finally, the Committee recommends that the State party promote the effective application of labour legislation, provide judges and lawyers with training on this legislation and inform the Committee of cases related to discrimination in the labour market.

Court proceedings for racial discrimination

15. While noting the information provided by the State party, the Committee regrets that the State party has not provided detailed information on complaints concerning racial discrimination recorded and considered, nor any information relating to judgements handed down by the courts. The Committee is concerned that the Centre for Equal Treatment cannot be a party to legal proceedings (art. 6).

Referring to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system,

the Committee invites the State party to provide more detailed information on the content of the complaints and decisions rendered by the courts related to racial discrimination. The Committee asks the State party to ensure that the public, in particular persons of foreign origin from countries outside the European Union, is aware of its rights, including all legal remedies for racial discrimination. The Committee also recommends that the State party amend the Act of 28 November 2006 to give the Centre for Equal Treatment the capacity to take part in legal proceedings.

Discriminatory stereotypes in the media

16. The Committee is concerned that discriminatory stereotypes persist in the media with regard to certain groups and are of a nature to generate prejudice against these groups (arts. 2 and 7).

The Committee recommends that the State party, while respecting international standards relating to freedom of the press, take monitoring measures in respect of the media and prevent the spread of negative stereotypes with regard to certain ethnic groups. It also recommends that the State party conduct campaigns to raise the awareness of journalists, and the whole population, of the Convention.

D. Other recommendations

Ratification of other instruments

17. Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments to which it is not already a party, especially those that relate directly to racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Labour Organization Domestic Workers Convention, 2011 (No. 189).

Dialogue with civil society

18. The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.

Follow-up to concluding observations

19. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 12 and 15 above.

Recommendations of particular importance

20. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 9, 11 and 16 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination

21. The Committee recommends that the State party's periodic reports be made readily available to the general public as soon as they are submitted and that the Committee's

concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next report

22. The Committee recommends that the State party submit its eighteenth, nineteenth and twentieth periodic reports in a single document by 31 May 2017, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chapter I, paragraph 19).